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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF ALASKA
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8 **BOARDS OF TRUSTEES OF THE**
9 **ALASKA PIPE TRADES U.A. LOCAL**
10 **367 HEALTH & SECURITY TRUST**
11 **FUND, *et al.*,**

12 **Plaintiffs,**

13 **vs.**

14 **POLAR REFRIG & RESTAURANT**
15 **EQUIP, INC., *et al.*,**

16 **Defendants.**

3:18-CV-00050 JWS

ORDER AND OPINION

[Re: Doc. 15]

17 **I. MOTION PRESENTED**

18 At docket 15 Plaintiffs Boards of Trustees of the Alaska Pipe Trades U.A. Local
19 367 Health & Security Trust Fund, Anchorage Alaska Area Pipe Trades Local Joint
20 Apprenticeship Training Fund, U.A. Locals No. 375 and 367 Supplemental Pension
21 Trust Fund, International Training Fund, and Plumbers & Pipefitters National Pension
22 Fund ("Trust Funds") move for summary judgment against Defendant Polar Refrig &
23 Restaurant Equip, Inc. ("Polar") and ask the court to award them payment of Polar's
24 outstanding benefit contributions for the hours worked by Polar's employees from
25 September 2016 through March 2018, as well as liquidated damages, interest, audit
26 fees, and attorneys' fees. The Trust Funds also seek summary judgment against
27 Defendant Hartford Fire Insurance Company ("Hartford") to collect proceeds from the
28 General Contractor's License Bond Hartford issued to Polar. Polar did not respond to

1 the motion, but the Trust Funds filed a reply at docket 20. Oral argument was not
2 requested and would not be of assistance to the court.

3 **II. STANDARD OF REVIEW**

4 Summary judgment is appropriate where “there is no genuine dispute as to any
5 material fact and the movant is entitled to judgment as a matter of law.”¹ The materiality
6 requirement ensures that “[o]nly disputes over facts that might affect the outcome of the
7 suit under the governing law will properly preclude the entry of summary judgment.”²
8 Ultimately, “summary judgment will not lie if the . . . evidence is such that a reasonable
9 jury could return a verdict for the nonmoving party.”³ However, summary judgment is
10 mandated “against a party who fails to make a showing sufficient to establish the
11 existence of an element essential to that party’s case, and on which that party will bear
12 the burden of proof at trial.”⁴

13 The moving party has the burden of showing that there is no genuine dispute as
14 to any material fact.⁵ Where the nonmoving party will bear the burden of proof at trial on
15 a dispositive issue, the moving party need not present evidence to show that summary
16 judgment is warranted; it need only point out the lack of any genuine dispute as to
17 material fact.⁶ Once the moving party has met this burden, the nonmoving party must
18 set forth evidence of specific facts showing the existence of a genuine issue for trial.⁷
19 All evidence presented by the non-movant must be believed for purposes of summary
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21 ¹Fed. R. Civ. P. 56(a).

22 ²*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

23 ³*Id.*

24 ⁴*Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

25 ⁵*Id.* at 323.

26 ⁶*Id.* at 323-25.

27 ⁷*Anderson*, 477 U.S. at 248-49.

1 judgment, and all justifiable inferences must be drawn in favor of the non-movant.⁸
2 However, the non-moving party may not rest upon mere allegations or denials but must
3 show that there is sufficient evidence supporting the claimed factual dispute to require a
4 fact-finder to resolve the parties' differing versions of the truth at trial.⁹

5 **III. UNDISPUTED FACTS**

6 The Trust Funds are jointly administered labor-management employee benefit
7 trust funds, organized and operated pursuant to ERISA, 29 U.S.C. § 1001, *et seq.* and
8 created under Section 302(c) of the LMRA, 29 U.S.C. §§ 185 and 186(c). The Trust
9 Funds provide employee benefits to covered employees of employers who are
10 signatories to a collective bargaining agreement (CBA). In March of 2016, Polar
11 executed an agreement that bound it to the National Service and Maintenance
12 Agreement (NSMA), which is a CBA between the United Association of Journeymen
13 and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and
14 Canada, AFL-CIO and the Mechanical Service Contractors of America. The NSMA
15 requires Polar to contribute to the Trust Funds—the local ones and the International
16 Training Fund. It incorporates the terms and conditions of the local CBAs for
17 determining specific contribution requirements. Polar was also party to an agreement
18 with the Plumbers & Pipefitters National Pension Fund (National Pension Fund
19 Agreement) which required it to contribute to that particular Trust Fund. By signing the
20 National Pension Fund Agreement and the NSMA, Polar agreed to the terms of the
21 written trust agreements. The individual trust agreements provide for the payment of
22 liquidated damages and interest in the event of delinquent contributions and set how
23 those fees would be calculated.

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27 ⁸*Id.* at 255.

28 ⁹*Id.* at 248-49.

1 Following the execution of the various agreements, Polar hired employees who
2 performed work subject to the agreements' scope of work provisions. It also obtained a
3 \$25,000 bond from Hartford to insure against a breach of contract.

4 An audit conducted in 2018 revealed that Polar was delinquent in its contributions
5 to the local Trust Funds from September 2016 through March 2018 in the amount of
6 \$12,356.81. The audit also calculated interest on the delinquent payments to be
7 \$1,176.11 and liquidated damages stemming from the delinquency to be \$3,109.82.
8 Fees for the audit, which Polar was obligated to pay under the agreements, amounted
9 to \$3,612.50. It was also determined by a trust administrator that Polar owed
10 contributions in the amount of \$10,659.11 to the Plumbers & Pipefitters National
11 Pension Fund and the International Training Fund for this same period. The
12 administrator calculated the interest owed to be \$3,998.25 and the liquidated damages
13 to be \$1,537.64. The Trust Funds subsequently filed this action to collect benefit
14 contributions from Polar.

15 Polar has not controverted the facts set forth by the Trust Funds, nor has it paid
16 the amounts owed. The facts are supported by the materials submitted in conjunction
17 with the motion.

18 **IV. DISCUSSION**

19 The facts set forth in the motion and the supporting materials, which have not
20 been contested, sufficiently demonstrate that the Trust Funds are entitled to summary
21 judgment. Polar is liable for unpaid contributions to the Trust Funds in the amount of
22 \$23,015.92.

23 Under 29 U.S.C. § 1132(g)(2), the Trust Funds are entitled to fees as well.¹⁰
24 These fees include interest on the unpaid contributions, liquidated damages provided
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26 ¹⁰See *Nw. Adm'rs, Inc. v. Albertson's Inc.*, 104 F.3d 253, 257 (9th Cir. 1996) (noting that
27 a benefit plan is entitled to a mandatory fee award under ERISA if the employer is delinquent at
28 the time the action is filed, the district court enters judgment against the employer, and the plan
provides for an award of fees).

1 for under the plan, reasonable attorneys' fees and costs, and any other legal or
2 equitable relief that is appropriate.¹¹

3 The unpaid contributions amount to \$23,015.92. Interest on the missed
4 payments totals \$5,174.36. Liquidated damages amount to \$4,647.46. The audit fee is
5 \$3,612.50. Polar is therefore liable for a total of \$36,450.24 plus attorneys' fees.

6 The Trust Funds are also entitled to summary judgment as to their claim for
7 payment of \$25,000 under the General Contractor's Bond issued by Hartford. The
8 amount of contributions plus interest and fees owed under the various agreements
9 totals more than \$25,000 and therefore the entire amount of the bond's proceeds shall
10 be paid to the Trust Funds to partially satisfy the amount owed by Polar.

11 **V. CONCLUSION**

12 Based on the preceding discussion, the Trust Funds' motion for summary
13 judgment at docket 15 is GRANTED. Polar is liable for \$36,450.24, plus attorneys' fees
14 and costs. The proceeds of Polar's General Contractor's Bond shall be paid to the Trust
15 Funds in partial satisfaction of Polar's liability.

16 DATED this 5th day of August 2019.

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18 /s/ JOHN W. SEDWICK
19 SENIOR JUDGE, UNITED STATES DISTRICT COURT
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28 ¹¹29 U.S.C. § 1132(g)(2).